

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SKY GASKINS, DENNIS
GASKINS, and JEAN GASKINS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHELLE GASKINS,

Respondent-Appellant,

and

RICK GASKINS,

Respondent.

UNPUBLISHED

October 26, 2004

No. 253314

Genesee Circuit Court

Family Division

LC No. 01-114685-NA

In the Matter of SKY GASKINS, DENNIS
GASKINS, and JEAN GASKINS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RICK GASKINS,

Respondent-Appellant,

and

MICHELLE GASKINS,

Respondent.

No. 253335

Genesee Circuit Court

Family Division

LC No. 01-114685-NA

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

In these consolidated cases, respondents Michelle Gaskins and Rick Gaskins appeal as of right from an order terminating their parental rights to the minor children, Sky Gaskins (d/o/b

7/25/96), Dennis Gaskins (d/o/b 8/31/97), and Jean Gaskins (d/o/b 3/24/99), under MCL 712A.19b(3)(b)(i) and (ii) (parent's abuse or failure to prevent abuse and likelihood of future harm) and (g) (failure to provide proper care and custody).¹ We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

The FIA filed a petition in this case on November 14, 2001, alleging that the Gaskins had a history of physical abuse and neglect. The petition alleged that, on November 13, 2001, Sky complained of pain on urination and stated, "my daddy touches me down there." A medical examination revealed that Sky's hymen was recently injured and there were bruises on her tibia. The children were removed from the home, but Michelle Gaskins was granted visitation.

The FIA amended the petition on February 19, 2002, seeking to terminate respondents' parental rights. In addition to the previous allegations, the amended petition alleged that the injury to Sky's hymen was recent and consistent with "manipulation, probably digital," and that Sky did not have a urinary tract infection, which could have caused the pain on urination. The examination indicated that an adult caused the injury, and Sky had named no adult except Rick Gaskins. The petition alleged that Rick Gaskins admitted tickling the children on their inner upper thighs.

Regarding Michelle Gaskins, the petition alleged that she would not let Sky be interviewed outside of her presence, and behaved inappropriately to Sky at the hospital by yelling at her, telling her she was lying, and calling her a "bitch" for reporting that Rick Gaskins had touched her. The petition alleged that Michelle Gaskins did not believe Rick Gaskins touched Sky or acted inappropriately, and concluded that she would not protect the children from further abuse.

On August 7, 2002, a "tender years" hearing was held on the issue of Sky's claim of sexual abuse. Sky again reported that Rick Gaskins had touched or tickled her between her legs, and said that he did so with the other children as well. Sky said she was clothed at the time. Rick Gaskins admitted that he tickled the children "at the top of the legs, at the top of the groin area."

After an extensive physical examination, a pediatrician qualified as an expert in child sexual abuse found indications of recent manipulation of Sky's vagina, probably by the insertion of something, that were consistent with sexual abuse and unlikely to have resulted from a fall onto an object. These symptoms could not have been caused by tickling and were unlikely to have occurred with Sky's clothes on or to have been self-inflicted. The pediatrician indicated that in her experience, it would have been unusual for a girl Sky's age to invent such a story.

After a hearing on October 23, 2002, the petition was orally amended, and the Gaskins pleaded no contest to allegations that "the environment in the home created an unsafe

¹ A fourth child, Judy, was born to the Gaskins in another county during the course of this case, but the trial court did not obtain jurisdiction over that child and that child is not a subject of this appeal.

environment for the minor children.” The trial court assumed jurisdiction over the children. The order stated that the termination request would be held in abeyance for three months, during which time Michelle Gaskins was to attend reading classes and individual and couple counseling. The order further stated, “Due to parents’ limitations additional assistance shall be provided to assist parents in completing [the parent/agency agreement].”

By July 30, 2003, after several hearings, the trial court issued an order authorizing a termination petition, although it noted that “partial” progress had been made in alleviating the conditions that led to the children’s placement. The FIA filed a lengthy supplemental petition seeking termination of respondents’ parental rights on August 19, 2003, that included the new allegation that Michelle Gaskins’ psychological evaluation revealed low intelligence and a learning disorder, and that she had failed to comply with the parent/agency agreement (the PAA). The children were developmentally delayed, but progressed well in foster care, which suggested that Michelle Gaskins’s low intellectual capacity had affected the children’s development.

Concerning Rick Gaskins, the new allegations reported a second medical examination of Sky that was normal, but did not preclude sexual abuse. The petition alleged that Rick Gaskins had not complied with the PAA because, although he participated in three individual counseling sessions and two family therapy sessions, he ended his participation on the advice of his attorney because of the sexual abuse issues. The petition also alleged that there had been seven investigations for abuse and neglect when the Gaskins were living in Florida, and twelve more since they returned to Michigan. The children’s psychological evaluations indicated that Sky feared Rick Gaskins and that the other two children demonstrated aggressive behavior.

The termination hearing began on November 5, 2003. The trial court accepted the testimony at the tender years hearing for the termination hearing. Testimony indicated that Rick Gaskins had difficulty taking the psychological evaluation tests, was frustrated, and said he would answer randomly because the questions were not worded correctly. Rick Gaskins had a below-average IQ, poor impulse control, poor frustration tolerance, and difficulty solving problems. The psychologist recommended treatment for impulse control, defensiveness, and a sex offender class to “assure that he knows how to interact appropriately with the children.”

Michelle Gaskins’s IQ was well below average. Testing showed she missed her children, but was defensive and had considerable stress in parenting. The evaluation indicated that her relationship with Dennis was “problematic” and she was unable to control his behavior or feel effective parenting him, although she seemed unaware that she needed help as a parent. The psychologist indicated that the combination of low intelligence and defensiveness could increase the likelihood of abuse or neglect.

The Gaskins’s therapist testified that the Gaskins admitted neglecting the children, including an instance in which there was fecal matter on the walls and they did not remove it, although their current home was appropriate, clean, and in good condition. Therapy ended when Rick Gaskins refused to discuss the sexual abuse allegations because there were no charges and he claimed he did not do what was alleged.

One of the foster care workers testified that when the children were placed in foster care, they were all developmentally delayed and had head lice. Sky was acting out sexually with the other children, and Dennis was extremely physically aggressive against children and adults. Both Sky and Dennis said that Rick Gaskins was “mean” and that he hit them. The Gaskins

were given transportation, counseling, and parenting classes. They were also offered additional counseling nearer their home to address denial, parenting issues, anger management, impulse control, and housing concerns, but they apparently did not accept the offer. Although Michelle Gaskins attended a literacy program consistently, she did not study outside of the program. The foster care worker recommended termination, saying the case had gone on long enough, the children had improved in foster care, and it would be challenging for the Gaskins to deal with the children's developmental problems, especially because the Gaskins just had another baby.

A school social worker testified that Dennis was in a program for children with developmental delays. On several occasions in 2000 and 2001, he saw marks or bruises on Dennis, including burns on the face, shoulder, and arm, a swollen and red penis, facial bruises, and a rope burn on the neck. He identified some of these injuries in photographs that were admitted as exhibits. Sky had also told a teacher about being beaten with a brush and pain in the vaginal area and the teacher told the social worker. The trial court admitted this testimony as an excited utterance without addressing the problem of hearsay within hearsay, although Sky may have also told the social worker about the incidents. There were also complaints about Sky's and Dennis's hygiene.

Another foster care worker testified that the Gaskins were offered psychological evaluations, reading classes for Michelle Gaskins, parenting classes, individual counseling, and couple counseling pursuant to the PAA and the trial court's order. Although the Gaskins had made progress with their home issues and Michelle Gaskins participated in reading classes, she was not making progress because she did not practice at home, and there had been no progress on Rick Gaskins's defensiveness or on the alleged sexual and physical abuse. The foster care worker requested termination because of substantiated physical and sexual abuse, and because the circumstances had not changed since filing.

Michelle Gaskins offered testimony of a social worker and a doctor, but neither witness would rule out the possibility that Sky had been sexually abused. Michelle Gaskins also testified on her own behalf, and explained that she had attended special education classes through twelfth grade, but could not write, and could only read a "little." Michelle Gaskins was not employed, but both she and Rick Gaskins each received approximately \$400 monthly in SSI benefits, and also received SSI benefits for Dennis. The Gaskins also received weekly visits from an FIA worker.

Michelle Gaskins remembered "signing a piece of paper" that was apparently the PAA, but thought what she needed to do for the children to be returned was complete parenting classes and reading classes and see a psychologist. According to Michelle Gaskins, the psychologist did not tell her what she needed to do. When asked to read the PAA on the stand, Michelle Gaskins had some difficulty. She said no one from FIA had ever read it to her, but had simply mailed her a copy. Michelle Gaskins stated that she believed she had complied fully with the PAA.

Michelle Gaskins testified that she had not discussed the alleged sexual abuse with Sky and Sky had never told her or the doctors anything about it. Michelle Gaskins said Rick Gaskins did not touch Sky and could not have abused her because "the kids were always with me." Michelle Gaskins said that if she thought Rick Gaskins had abused her child, she would have left him. Michelle Gaskins said they disciplined the children by timeouts or withholding TV, and only rarely spanked them.

Michelle Gaskins admitted there had been three investigations and complaints in Florida relating to a dirty house and bruises on Sky, but said the house was not dirty. Michelle Gaskins explained that Dennis was treated in the emergency room for sunburn, which he got when he fell asleep against a car window, and also scarlet fever, which was the reason his penis was red. Michelle Gaskins said the child in most of the photographic exhibits was not Dennis. Michelle Gaskins said that she had learned a lot from her parenting classes, but she had not made mistakes before and was raising her children properly. Michelle Gaskins testified that she did not get along with the therapist because she falsely accused Rick Gaskins of abusing her. She denied that Rick Gaskins made most of the decisions or dominated her, and she testified that if she were ordered to do so, she would keep the children away from him.

Rick Gaskins also called several witnesses, including an FIA prevention worker who had made unannounced visits to the Gaskins's home and testified that there had been no problems with the Gaskins's new baby and the home appeared clean. She had set goals for the Gaskins, including working with the agencies providing services, updating their home, and Rick Gaskins looking for employment. Many services were being provided, including counseling for both, and they complied with everything asked. An investigation indicated there was no reason to remove the Gaskins's baby. The FIA worker concluded that the home would be suitable for all four children and that, given assistance, the Gaskins would be able to meet the FIA's requirements. However, the foster care worker disagreed that the baby was safe with the Gaskins in light of their history.

Rick Gaskins testified that he could read and write, but had some comprehension problems. He was unemployed, but had worked a temporary job for one day two months earlier, and also had worked on demolishing a building. He believed that the PAA required therapy and parenting classes. He denied touching Sky in her private parts inappropriately. He denied hitting Dennis in the face and said he only spanked the children lightly. He also testified that Dennis was sunburned on a long trip after sleeping in the car, and that the doctor had said Dennis' penis was red because of scarlet fever.

Rick Gaskins made all his scheduled visits with the children. He had gone through parenting classes on his own initiative, attended the mandatory classes, and took classes a third time when their newest baby was born because he thought it would be helpful. He had learned about discipline and also took nutrition classes. He refused therapy because the therapist falsely accused him of sexual abuse and abusing his wife, but said would welcome any other therapy.

Rick Gaskins admitted that their house had not been clean before, but said he was now aware of what was needed. They had chosen their new home in a better location with the children in mind. He was willing to do therapy to work on his domineering personality, but denied dominating Michelle Gaskins and said he tried to help her with her disabilities.

Rick Gaskins testified that the FIA had not offered services before removing the children, but this testimony was contradicted by a foster care worker who testified that the Gaskins had been provided homemaker services, Families First services, and prevention services in an unsuccessful attempt to avoid having to remove the children. Rick Gaskins also indicated that only one of the photographs admitted as exhibits showing bruises was of Dennis. When the trial court asked why Sky would say he touched her "down there," Rick Gaskins said he "always tickled her right about here on her legs. That is down there. Not close to the [vagina] area or

anything like that.” She may have said he hurt her because they “roughhoused” and a person could be hurt accidentally.

Over the Gaskins’s objections, the trial court admitted computer logs of child abuse reports kept by Michigan and Florida agencies. The Michigan logs consisted of numerous reports, mostly undated, of bruises and other injuries to the children, as well as allegations of hygiene neglect and beatings. The Florida logs contained six “abuse reports” relating to neglect, having an unclean home, slapping the children, neglecting the children’s hygiene, not providing enough food, and bruises and bite marks on the children.

The trial court delivered its opinion from the bench. The trial court stated there was clear and convincing evidence to support MCL 712A.19b(3)(b)(i) and (ii) and (g). The trial court continued that the photographic evidence showed that the children had been seriously bruised, and that although sexual abuse had not been proved by clear and convincing evidence, Rick Gaskins had engaged in improper touching of the children. The trial court also noted that the Gaskins had a long, documented history of abuse and neglect.

The trial court stated that it considered the Gaskins’s developmental level, and concluded that it was a factor, but not the main factor, that led to neglect. The trial court recognized that Michelle Gaskins had improved her skills and encouraged her to continue seeking counseling and other services, but admonished her, as a victim of sexual abuse, for being more willing to protect her husband than her children. The trial court also admonished the FIA, stating:

I will say FIA could have done a better job. You have nothing to be proud of in this case. These parents might have had the ability to step up and be parents. They needed the additional help. And I am not saying it is you two. I am saying it is the FIA.

And if you two bear the respons—some of the responsibility, you should take it and learn from it. Your duty is to protect the children, not necessarily take the children. And if it requires extra work, do it.

And I understand with budget cuts and everything, that is not an excuse. We are all in this to protect kids. If it requires more work and more effort, then you need to do that. If it requires more services, then we need to do that.

The trial court nonetheless found a statutory basis for termination, particularly emphasizing subdivision (g). Rick Gaskins interrupted to ask what they needed to do “to bring this family back together,” and the trial court responded that while it was too late for these children, the Gaskins needed counseling and services for the new child, including Michelle Gaskins’s reading classes. The trial court added that Michelle Gaskins would need to stop Rick Gaskins from hurting and improperly touching the children. The trial court found termination to be in the children’s best interests given their ages and the time necessary to rectify the situation. The trial court concluded that there was no reasonable likelihood the matter could be corrected, and the children needed a safe, stable home and proper care in order to flourish.

II. The Americans With Disabilities Act

A. Standard Of Review

Whether the FIA violated the ADA is an issue of law that we review de novo.²

B. Reasonable Accommodations

The Gaskins argue that the FIA violated the Americans With Disabilities Act (ADA)³ by not making reasonable accommodations for their disabilities. The ADA requires the FIA to make reasonable accommodations for individuals with disabilities in its attempts to rectify the conditions that produced the case.⁴ This is a part of the general requirement that the FIA make reasonable efforts to reunite the family.

The trial court in this case ordered “additional assistance” to help the Gaskins complete the parent/agency agreement, presumably to fulfill the ADA requirements. Numerous services were offered, including reading classes, transportation, and counseling. The trial court’s opinion could be interpreted as finding that additional services were necessary, but the trial court did not identify what services were needed or would have been helpful. The Gaskins also fail to identify what more needed to be done to accommodate them. We conclude that the ADA was satisfied, in that services were provided as required and reasonable efforts were made to reunite the family.

III. Admissibility Of The Evidence

A. Standard Of Review

We review the trial court’s decision to admit evidence for an abuse of discretion, but we review de novo any legal issues underlying the determination of admissibility.⁵

B. Hearsay Exceptions

Michelle Gaskins argues that inadmissible evidence was used to support termination. Although the record is somewhat unclear, it appears that the trial court took jurisdiction on the basis of orally amended allegations of environmental neglect. Accordingly, to the extent termination was sought because of alleged sexual and physical abuse and other neglect, termination was sought on the basis of circumstances different from those that led to jurisdiction and the new facts alleged had to be proven by legally admissible evidence.⁶

² See *In re Terry*, 240 Mich App 14, 24; 610 NW2d 563 (2000).

³ 42 USC 12101 to 12213.

⁴ See *In re Terry*, *supra* at 25-26.

⁵ See *Shuler v Mich Physicians Mut Liab Co*, 260 Mich App 492, 509; 679 NW2d 106 (2004); *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

⁶ MCR 3.977(F); *In re CR*, 250 Mich App 185, 201-202; 646 NW2d 506 (2002); *In re Snyder*, 223 Mich App 85, 90-91; 566 NW2d 18 (1997).

Turning to the challenged evidence, we conclude that the child's statements that Rick Gaskins touched her in her private areas were properly admitted through the testimony of a doctor and FIA worker given at the tender years hearing. These statements, while hearsay, were clearly admissible under MCR 3.972(C)(2).⁷ The abuse reports from Michigan and Florida were also admissible as a hearsay exception under MRE 803(6). Thus, we conclude that the trial court's findings were not based on inadmissible evidence.

IV. Clear And Convincing Evidence

A. Standard Of Review

We review the trial court's findings of fact, and its determination regarding the child's best interests, for clear error.⁸ A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made.⁹ Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it.¹⁰

B. Legal Standards

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence.¹¹ If the petitioner establishes a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests.¹² The trial court's decision regarding the child's best interests is reviewed for clear error.¹³

C. The Evidence

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.¹⁴ There was evidence that the Gaskins had completed parenting classes, made some progress in housekeeping, and were caring for a new baby. Nonetheless, we conclude there was clear and convincing evidence of physical abuse and improper touching of the children, regardless whether it was sexual abuse, and failure to protect the children from that abuse. The evidence showed that the Gaskins had not addressed those issues, but instead exhibited strong denial, and were thus likely to repeat the behavior. This,

⁷ *Snyder, supra* at 91-92.

⁸ MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993).

¹² MCL 712A.19b(5); *In re Trejo, supra* at 353.

¹³ *Id.* at 356-357.

¹⁴ MCR 3.977(F); *In re Miller, supra* at 337.

along with the evidence of abuse, neglect, and the Gaskins's continued lack of employment, also showed a failure to provide proper care and custody.

Finally, we find that the evidence did not show that termination of the Gaskins's parental rights was clearly not in the children's best interests.¹⁵ Therefore, we conclude that the trial court did not clearly err in terminating respondents' parental rights.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra

¹⁵ MCL 712A.19b(5); *In re Trejo*, *supra* at 356-357.